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January 12, 2010

Magistrate Judge William D. Wall
United States District Judge
United States District Court
Eastern District of New York
100 Federal Plaza
P.O. Box 9014
Central Islip, NY 11722-9014

**Re: The Lincoln Life & Annuity Company o New York v.
H. Thomas Moran, et al
Docket No. 08-cv-699 (TCP (WDW))**

Dear Magistrate Judge Wall:

This letter motion is being filed pursuant to His Honor's Individual Rules and pursuant to Local Civil Rules 37.1 and 37.3.

This firm represents Third-Party Defendant Zalman Silber in the above referenced action.

In mid-December 2009, Lincoln Life and Annuity Company of New York noticed the deposition of my client Zalman Silber for January 13, 2010.

If this Court will recall, a settlement conference was held before this Court on September 9, 2009. At that settlement conference, accusations of a criminal nature were made against my client relating to this action and with regard to other issues. In light of these (baseless) accusations, I felt that I, as a civil litigator without any criminal law experience, was not qualified to defend the deposition of Mr. Silber.

Mr. Silber has been personally represented for many years by Jacob Laufer, Esq., an attorney with many years of experience in criminal law. I therefore suggested that Mr. Silber retain Mr. Laufer to represent him at the scheduled deposition. On Friday, January 8, 2010, Mr. Laufer advised me that he was to begin a criminal trial in the United States District Court for the District of New Jersey on January 11, 2010.

Magistrate Judge William D. Wall
January 12, 2009
Page 2

I immediately advised all counsel, via email, that a continuance of the deposition was necessary. *See* Exhibit 1 (Email dated January 8, 2010 from Ira S. Lipsius). Counsel for Lincoln Life and Annuity Company of New York responded, via email, rejecting the request. *See* Exhibit 2 (Email dated January 8, 2010 from Jarrod Shaw with attachment).

Mr. Silber's request to reschedule the deposition was the first request to reschedule the deposition. Lincoln Life and Annuity Company of New York's objections are that there is an upcoming discovery deadline and no date certain has been set for the rescheduled deposition.

Following a conference with counsel for Lincoln, a compromise has been reached, subject to this Court's approval:

The deposition of Mr. Silber be continued and will be rescheduled to a date mutually acceptable to counsel for all parties.

Mr. Silber will make himself available for deposition three business days after the end trial in United States District Court for the District of New Jersey, Docket 3:08-cr-00629-GEB-3.

Counsel for Mr. Silber will notify counsel for all parties the day following the end of trial.

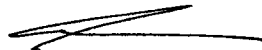
The discovery deadline is extended to 21 days from the date of Mr. Silber's deposition.

A copy of this proposed resolution has been forwarded to counsel for all parties and there has been no objection to this proposal.

It is therefore respectfully requested that this Court approves this proposed change to the scheduling order.

Very truly yours,

SCHINDEL, FARMAN, LIPSIUS,
GARDNER & RABINOVICH LLP



Ira S. Lipsius

ISL:bl
Enclosure

Ira S. Lipsius

From: Ira S. Lipsius
Sent: Friday, January 08, 2010 10:41 AM
To: 'jarrod.shaw@dbr.com'; 'skemmons@phillipsmurrah.com'; 'lalong@phillipsmurrah.com'; 'dmtodd@phillipsmurrah.com'; 'pjbrown@phillipsmurrah.com'; 'jcampolo@cmnallp.com'; 'jcf@frankelnewfield.com'; 'krobinson@winthrop.com'; 'emulvaney@winthrop.com'; 'mrmcvay@phillipsmcfall.com'; 'mrmcvay@phillipsmurrah.com'; 'vrjenkins@phillipsmurrah.com'; 'nshanahan@coleschotz.com'; 'tsmith@kknlylaw.com'; 'tmsmithlaw@gmail.com'; 'thuy.bui@dbr.com'; 'wgyves@entwistle-law.com'; 'jmancini@mayerbrown.com'; 'jmarsala@mayerbrown.com'; 'arubin@entwistle-law.com'; 'edehart@entwistle-law.com'
Cc: 'jlaufer@lauferlaw.com'
Subject: Lincoln Life v. Moran; edny, 08-cv-699
 Counsel:

Lincoln has sent notice of the deposition of Zalman Silber. The deposition has been noticed for January 13, 2009.

Mr. Silber has been personally represented by Jacob Laufer, Esq. for a long period of time. Mr. Laufer will represent Mr. Silber at his deposition.

Mr. Laufer informed me, today, that he will be on trial beginning January 11, 2010 in an action in the United States District Court for the District of New Jersey, DOCKET: 3:08-cr-00629-GEB-3. I set forth below the docket record in that case indicating Mr. Laufer's appearance on January 6, 2010 and the minute order of January 7, 2010 confirming jury selection on Monday January 11, which will be followed by trial.

Mr. Laufer and I will contact all parties upon completion of the trial to set a date for the deposition.

I would have attempted to make this notification telephonically, but, due to the great number of attorneys it would have been very difficult.

I thank everyone for the anticipated cooperation.

Date Filed	#	Docket Text
01/07/2010		Minute Entry for proceedings held before Chief Judge Garrett E. Brown, Jr.:Telephone Conference as to ROBERT SACKS, DIEGO HERNANDEZ held on 1/7/2010. Jury Selection confirmed to commence 1/11/10 @ 9:00 a.m.; videoconference scheduled to commence 1/12/10 @ 10:00 a.m. (EST), 3rd floor annex, Trenton. (Court Reporter/Recorder K. Korchick.) (dm) (Entered: 01/07/2010)
01/06/2010	<u>181</u>	NOTICE OF ATTORNEY APPEARANCE: GEORGE J. PARNHAM appearing for ROBERT SACKS <i>Appearance of Jacob Laufer</i> (PARNHAM, GEORGE) (Entered: 01/06/2010)

Ira S. Lipsius
 Schindel, Farman, Lipsius, Gardner & Rabinovich, LLP

1/12/2010

Ex 1

14 Penn Plaza
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212-563-1710 ext. 202
fax: 212-695-6602

1/12/2010

Ira S. Lipsius

From: Shaw, Jarrod D. [Jarrod.Shaw@dbr.com]
Sent: Friday, January 08, 2010 2:08 PM
To: Ira S. Lipsius
Cc: jlaufer@lauferlaw.com; skemmons@phillipsmurrah.com; lalong@phillipsmurrah.com; dmtodd@phillipsmurrah.com; pjbrown@phillipsmurrah.com; jcampolo@cmnallp.com; jcf@frankelnewfield.com; krobinson@winthrop.com; emulvaney@winthrop.com; mrmcvay@phillipsmcfall.com; mrmcvay@phillipsmurrah.com; vrjenkins@phillipsmurrah.com; nshanahan@coleschotz.com; tsmith@kknlylaw.com; tsmithlaw@gmail.com; wgyves@entwistle-law.com; jmancini@mayerbrown.com; jmarsala@mayerbrown.com; arubin@entwistle-law.com; edehart@entwistle-law.com; Gosselin, Jason P.
Subject: RE: Lincoln Life v. Moran; edny, 08-cv-699

Ira,

Please see attached letter.

Jarrod

From: Ira S. Lipsius [mailto:iral@sfl-legal.com]
Sent: Friday, January 08, 2010 10:41 AM
To: Shaw, Jarrod D.; skemmons@phillipsmurrah.com; lalong@phillipsmurrah.com; dmtodd@phillipsmurrah.com; pjbrown@phillipsmurrah.com; jcampolo@cmnallp.com; jcf@frankelnewfield.com; krobinson@winthrop.com; emulvaney@winthrop.com; mrmcvay@phillipsmcfall.com; mrmcvay@phillipsmurrah.com; vrjenkins@phillipsmurrah.com; nshanahan@coleschotz.com; tsmith@kknlylaw.com; tsmithlaw@gmail.com; Bui, Thuy T.; wgyves@entwistle-law.com; jmancini@mayerbrown.com; jmarsala@mayerbrown.com; arubin@entwistle-law.com; edehart@entwistle-law.com
Cc: jlaufer@lauferlaw.com
Subject: Lincoln Life v. Moran; edny, 08-cv-699

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1/12/2010

Ex 2

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Thank you very much.



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January 8, 2010

VIA ELECTRONIC MAIL

Ira S. Lipsius
Schindel, Farman, Lipsius, Gardner & Rabinovich, LLP
14 Penn Plaza
New York, NY 10122

RE: The Lincoln Life and Annuity Company of New York v. H. Thomas Moran, II, No. 08-699 (E.D.NY)

Dear Mr. Lipsius:

I am in receipt of your email from today notifying counsel in this matter that Mr. Silber will not be appearing for his deposition on January 13, 2010. Given the upcoming discovery deadline of January 29, 2010 and your failure to timely notify counsel of any issues related to the deposition, I cannot agree to postpone the deposition.

As you are aware, the Notice of Deposition was served on December 16, 2009, which you acknowledge receiving. Yet, even though you presumably knew that you would not be representing Mr. Silber at the deposition, you did not contact counsel with any issues or any potential issues regarding Mr. Laufer's availability. Accordingly, counsel for H. Thomas Moran, Court-Appointed Receiver of Lydia Capital, LLC, booked airline tickets to be in New York from Oklahoma to attend the deposition. It also remains unclear why Mr. Laufer's availability matters. Although you indicate he will be representing Mr. Silber at the deposition, you are Mr. Silber's counsel of record in this litigation. There is no indication you are not available nor is there any indication your client is unavailable.

There are additional reasons why Mr. Silber's deposition must go forward as noticed January 13. Your email does not provide any alternative dates, but instead provides "Mr. Laufer and I will contact all parties upon completion of the trial to set a date for the deposition." That is simply unacceptable. The discovery deadline in this case is January 29, 2010. Lincoln endeavors to complete its discovery by this deadline and your client's refusal to appear for deposition will prevent Lincoln from doing so. Moreover, additional discovery may be needed as a result of your client's testimony, which Lincoln will not have time to do given your refusal to produce Mr. Silber.


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DrinkerBiddle&Reath
LLP

Accordingly, it is Lincoln's intent to move forward with the deposition unless you seek and obtain a protective order from the Court. Should you have any questions please do not hesitate to contact me.

With regards,



Jarrod D. Shaw

JDS/cts

cc: Counsel of record (via electronic mail)